

REMARKS

Claims 1-8 are pending in the present application.

Election/Restriction

The Examiner has required election in the present application between:

Group I, claims 1 and 2, drawn to an antimicrobial agent produced by *S. salivarius*;

Group II, claim 3, drawn to a purified fraction comprising SEQ ID NOS: 2 and 3;

Group III, claim 4, drawn to a purified fraction of an antimicrobial agent; and

Group IV, claim 8, drawn to DNA sequence.

Election of Group I With Traverse

For the purpose of examination of the present application, Applicants elect, with traverse, Group I, Claims 1 and 2, and which includes claims 5-7 reciting an intended use for products of Group I.

Applicants traverse the Restriction Requirement which is based on the statement “Each of the compositions of groups I-IV is directed to a separate and distinct invention and these groups are restrictable because they are distinct compositions.” Applicants traverse this basis because this is circular reasoning.

Also, Applicants traverse the statement in the Office Action at page 2, lines 25-26 of “Clearly, a reference which would anticipate one of the above groups would not necessarily anticipate or even make obvious any of the others.” It is not clear if an anticipatory reference

would be found, or even if so, whether or not there is a question of patentability with respect to the remaining Groups of claims.

Additionally, in the international phase of this application, no lack of unity was found. Accordingly, none should be found here and Applicants respectfully request the USPTO to honor the PCT rules in this case. For the above reasons it is respectfully requested that the Groups be rejoined with the elected subject matter.

Finally, Applicants note that some of the indicated Classes overlap (see, e.g., Group II versus Group III). Thus, there is no undue burden on the Examiner to search the other Groups that are not elected.

Conclusion

A full and complete response has been made to all issues as cited in the Office Action. Applicants respectfully request that a timely Notice of Allowance issue for the present case.

If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to contact Eugene T. Perez (Reg. No. 48,501) at the offices of Birch, Stewart, Kolasch & Birch, LLP.

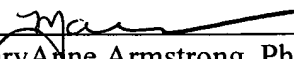
Application No.: 10/603,865
Art Unit 1651
Reply to Election/Restriction

Docket No.: 1377-0188P

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to our Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. § 1.16 or under § 1.17; particularly, extension of time fees.

Dated: DEC 22 2005

Respectfully submitted,

By 
MaryAnne Armstrong, Ph.D.
Registration No.: 40,069
BIRCH, STEWART, KOLASCH & BIRCH, LLP
8110 Gatehouse Road, Suite 100 East
P.O. Box 747
Falls Church, Virginia 22040-0747
(703) 205-8000
Attorney for Applicant